

PUBLIC UTILITIES COMMISSION

550 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 26, 1995

JAN 27 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: PR Docket No. 94-1007 DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the EMERGENCY MOTION FOR EXTENSION OF TIME by the People of the State of California and the Public Utilities Commission of the State of California in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

Ellen S. LeVine
Principal Counsel

ESL:mas

Enclosures

No. of Copies rec'd 0+11
List A B C D E

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Petition of the State of California)
and the Public Utilities Commission)
of the State of California to Retain)
Regulatory Authority over Intrastate)
Cellular Service Rates)

PR Docket No. 94-105

JAN 27 1995

EMERGENCY MOTION FOR EXTENSION OF TIME

Pursuant to Section 1.46 of the Rules of Practice and Procedure of the Federal Communications Commission ("FCC"), 47 C.F.R. §1.46, the People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby seek an emergency extension of time to and including Thursday, February 2, 1995 in order for California to comply with an Order, released January 25, 1995, by the Chief, Wireless Telecommunications Bureau (hereafter, "Order" and "Bureau Chief") in the above-referenced proceeding. The Order requires California to file revised versions of its petition and accompanying appendices by Friday, January 27, 1995.

In accordance with Section 1.46(c), counsel for California orally notified Stan Wiggins of the Wireless Telecommunications Bureau of the instant motion on Thursday, January 26, 1995. Mr. Wiggins indicated that the compliance date of January 27, 1995 contained in the Order was in error, and should have specified January 30, 1995. However, for the reasons set forth herein, it is impossible, as a practical matter, for California

to file the required revisions to its petitions and appendices by January 30, 1995, and respectfully moves for an extension to and including February 2, 1995 in order to comply with the Order.

BACKGROUND

In its Order, the Bureau Chief adopted procedures governing the treatment of materials submitted in connection with state petitions to retain authority over rates charged by certain commercial mobile service providers for which California and other state commissions requested confidential treatment. California submitted certain information under seal to the FCC in its petition which supported its findings that cellular markets within California are not sufficiently competitive at this time to remove state rate regulatory oversight. The information was submitted by California under seal because, with one exception, that same information had been provided to the CPUC under seal in the course of its own investigation of the cellular industry.¹ The exception concerned information obtained by the CPUC from the California Attorney General ("AG") which was provided by certain cellular carriers in the course of a state investigation for antitrust violations conducted by the AG.

1. The CPUC allowed parties to its own investigation to review the information which the cellular carriers provided directly to the CPUC, but pursuant to a protective order and nondisclosure agreements. No party, including any cellular carrier, formally appealed the CPUC's ruling ordering that such information be disclosed under the conditions set forth in its ruling.

In its Order, the Bureau Chief generally granted the CPUC's request to treat certain information contained in its petition as confidential, and authorized the release of such information pursuant to a protective order. This information is categorized by the Order as "Group A" and "Group B" and is described in paragraphs 25-30 and 34 of the Order.

With respect to information categorized as "Group C," the Bureau Chief denied the CPUC's request on substantive grounds with respect to certain customer plan-specific information, and on procedural grounds with respect to certain marketing information obtained by the CPUC from the California AG.² Regarding the latter, the Order stated that the CPUC could refile such information by Monday, January 30, 1995 in accordance with Rule 20.13 of the FCC's rules along with a request for confidential treatment of the information.

In Ordering Paragraph 44, the Order directs California "no later than January 27, 1995" to file separate redacted and unredacted versions of its petition and accompanying appendices

2. Group C consists of: (1) information contained in the CPUC's Appendix J of its petition concerning the number of customers on specific discount plans of each cellular carrier; and (2) information provided by the AG to the CPUC concerning marketing practices engaged in by certain cellular carriers. With respect to the first category, the Bureau Chief explained that such information is too competitively sensitive and not material to California's statutory demonstration. With respect to the second category, the Bureau Chief stated that, as a matter of procedure, the CPUC failed to submit an affidavit authenticating the information pursuant to Section 20.13 of the FCC's rules. 47 C.F.R. §20.13. The Order, however, provides that the CPUC may refile this information if it complies with Section 20.13, which the FCC will then review to determine whether to permit disclosure under protective order.

with the FCC in accordance with the conditions contained in the Order governing the treatment of information contained in Groups A, B, and C.

On January 25, 1995 at 8:41 p.m. and 9:23 p.m. EST (5:41 p.m. and 6:23 p.m. PST), the FCC served by facsimile a copy of the Order. Copies of the facsimile transmittal sheets are appended hereto. Counsel for California did not receive the Order until the morning of January 26, 1995.

As a practical matter, it is impossible for California to revise its petition to comply with the Bureau Chief's Order before Wednesday, February 1, 1995, for receipt by overnight mail of the petition by the FCC on Thursday, February 2, 1995.³ Specifically, in accordance with Paragraph 34 of the Order, the Bureau Chief has directed California to provide separate and revised versions, one in redacted form and another in unredacted form, of both the text and the appendices of its petition. In particular, California must file a revised public version which partially unredacts information categorized as Group A that pertains to AirTouch, BellSouth, L.A. Cellular, GTE and McCaw. Such filing will require revisions to Appendices G and H, and all text accompanying these appendices. Specifically, the Order will entail a line-by-line revision of these appendices for select companies. California must also revise portions of Appendix J,

3. Under the revised compliance date of January 30, 1995, California would have just one day to complete its revisions by Friday, January 27, 1995 for delivery by express mail to the FCC by January 30, 1995.

consisting of fifty pages, and corresponding text in the petition, and delete all materials categorized as Group C. Similarly, the Order will require selective editing of material previously provided in Appendix J.

California must then reproduce the newly-revised redacted and unredacted petitions, and serve twenty-two parties with copies of the redacted petition. The petition and accompanying appendices, in redacted and unredacted form, comprise hundreds of pages. The petition and accompanying appendices will also need to be reproduced separately, and sufficient copies made of the redacted version for service.

Given the limited resources available to the CPUC to revise the petition and accompanying appendices for filing in unredacted and redacted versions, including the reproduction of each version, it is simply impossible, as a practical matter, for the CPUC to complete these tasks before Wednesday, February 1, 1995, for overnight delivery of the revised filing to the FCC for receipt on Thursday, February 2, 1995.

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Accordingly, the CPUC believes that it has shown good cause for an extension of time in which to file its revised petition and accompanying appendices to and including February 2, 1995.

Dated: January 26, 1995

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
ELLEN S. LEVINE

By:


Ellen S. Levine

505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2047

Attorneys for the People of the
State of California
Public Utilities Commission
of the State of California



Federal Communications Commission
Wireless Telecommunications Bureau

FACSIMILE TRANSMITTAL MEMORANDUM

DATE: *January 25, 1995*

FROM: Julia Kogan

FAX: 202-634-7651

PHONE: 202-418-0630

TO: *Ellen Levine*

ORGANIZATION: *California P.U.C.*

FAX: *415-703-2262*

PHONE: *415-703-2047*

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, CALL 202-418-0630.

THE INFORMATION TRANSMITTED IN THIS MESSAGE IS PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE USE OF THE INTENDED RECIPIENT NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, NOTE THAT COPYING OF THIS COMMUNICATION OR DISSEMINATION OR DISTRIBUTION OF IT TO ANYONE OTHER THAN THE INTENDED RECIPIENT IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT 2025 M STREET, N.W., SUITE 5202, WASHINGTON DC 20554, VIA THE U.S. POSTAL SERVICE.



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Wireless Telecommunications Bureau

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CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 26th day of January, 1995, a true and correct copy of the foregoing MOTION FOR EXTENSION OF TIME by the People of the State of California and the Public Utilities Commission of the State of California was mailed first class, postage prepaid to all known parties of record in this proceeding.



Ellen S. LeVine